

Title 7.1

Alcoholic Beverage

TITLE 7.1. ALCOHOLIC BEVERAGES

IC 7.1-1-1-1

General purposes

Sec. 1. The following are the general purposes of this title:

- (1) To protect the economic welfare, health, peace, and morals of the people of this state.
- (2) To regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages.
- (3) To regulate the sale, possession, and distribution of tobacco products.
- (4) To provide for the raising of revenue.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.250-2003, SEC.1.

IC 7.1-1-2-2

Scope

Sec. 2. Except as provided in IC 7.1-5-1-3 and IC 7.1-5-1-6, this title applies to the following:

- (1) The commercial manufacturing, bottling, selling, bartering, importing, transporting, delivering, furnishing, or possessing of alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup, malt extract, liquid malt or wort.
- (2) The sale, possession, and distribution of tobacco products.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.213-2001, SEC.1; P.L.250-2003, SEC.2.

IC 7.1-1-3-8.5

"Certificate"

Sec. 8.5. "Certificate" means a tobacco sales certificate for purposes of IC 7.1-3-18.5.

As added by P.L.250-2003, SEC.3.

IC 7.1-1-3-47.5

"Tobacco product"

Sec. 47.5. "Tobacco product" has the meaning set forth in IC 7.1-6-1-3.

As added by P.L.250-2003, SEC.4.

IC 7.1-2

ARTICLE 2. ALCOHOL AND TOBACCO COMMISSION AND ADMINISTRATION

IC 7.1-2-2-5

Prosecutor; powers and duties

Sec. 5. Prosecutor: Powers and Duties. The prosecutor shall have the following powers and duties:

- (a) To prosecute before the commission all violations of laws pertaining to alcohol, alcoholic beverages, and tobacco, including violations pertaining to tobacco vending machines;
- (b) To prosecute before the commission all violations of the rules and regulations of the commission;
- (c) To assist the prosecuting attorneys of the various judicial circuits in the investigation and prosecution of violations of laws pertaining to alcohol, alcoholic beverages, and tobacco, including violations pertaining to tobacco vending machines, and to represent the state in these matters;
- (d) To appear before grand juries to assist in their investigations into matters pertaining to alcohol, alcoholic beverages, and tobacco, including matters pertaining to tobacco vending machines;
- (e) To establish a seal of his office;
- (f) To administer oaths and to do all other acts authorized by law for notaries public; and,
- (g) To employ, with the consent of the commission and at salaries fixed by the commission in their budget, the clerical staff required by him to effectively discharge his duties.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.250-2003, SEC.6.

IC 7.1-2-2-9

Sec. 9. (a) An enforcement officer is vested with full police powers and duties to enforce:

- (1) the provisions of this title;
- (2) any other law of this state relating to alcohol or alcoholic beverages; and

(3) tobacco laws, including tobacco vending machines.

(b) An enforcement officer may issue a summons for infraction or misdemeanor violations if the defendant promises to appear by signing the summons. A defendant who fails to appear is subject to the penalties provided by IC 35-44-3-6.5. Upon failure to appear, the court shall issue a warrant for the arrest of the defendant.

(c) In addition to the authority of an enforcement officer under subsection (a), an enforcement officer may act as an officer for the arrest of offenders against the laws of this state if the enforcement officer reasonably believes that a crime is or is about to be committed or attempted in the enforcement officer's presence.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by Acts 1979, P.L.83, SEC.1; P.L.84-1985, SEC.1; P.L.256-1996, SEC.1; P.L.177-1999, SEC.4.

IC 7.1-2-3-33

Investigations and penalties for violations of statutes relating to tobacco

Sec. 33. The commission is authorized to:

(1) investigate a violation of;

(2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

As added by P.L.177-1999, SEC.5. Amended by P.L.250-2003, SEC.5.

IC 7.1-3

ARTICLE 3. PERMITS

IC 7.1-3-1-3

Term of permits; renewal

Sec. 3. (a) A permit of any type issued by the commission, except as provided in subsections (b) and (f) or unless otherwise provided in this title, shall be in force for one (1) calendar year only, including the day upon which it is granted. At the end of the one (1) year period the permit shall be fully expired and null and void.

(b) Notwithstanding subsection (a), in a county containing a consolidated city, a permit that is subject to section 5.5 or 5.6 of this chapter is effective for two (2) calendar years, including the day upon which the permit is granted. However, a local board may recommend to the commission that the permit be issued or renewed for only a one (1) year period. The commission may issue or renew a permit for the period recommended by the local board.

(c) A permittee who is granted a two (2) year permit under subsection (b) or subsection (f) is liable for any annual fees assessed by the commission. The annual fee is due on the annual anniversary date upon which the permit was granted.

(d) If the commission grants a two (2) year permit, the commission may ask a local board to hold a hearing to reconsider the duration of a permittee's permit. A hearing held under this subsection is subject to section 5.5 or 5.6 of this chapter. A local board shall hold the hearing requested by the commission within thirty (30) days before the permittee's next annual anniversary date and forward a recommendation to the commission following the hearing.

(e) If a permittee is granted a permit for more than one (1) year, the commission may require the permittee to file annually with the commission the information required for an annual permit renewal.

(f) Notwithstanding subsection (a), the following are effective for two (2) calendar years, including the day upon which the permit is granted:

(1) A beer wholesaler's permit issued under IC 7.1-3-3-1.

(2) A wine wholesaler's permit issued under IC 7.1-3-13-1.

(3) A liquor wholesaler's permit issued under IC 7.1-3-8-1.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.52-1994, SEC.2; P.L.205-1999, SEC.8; P.L.250-2003, SEC.7.

IC 7.1-3-1-3.5

Deposit of permits; business not in operation

Sec. 3.5. A permittee to whom a retailer or dealer permit has been issued under this title, may deposit that permit with the commission for a period of one (1) year if the permittee is unable to immediately operate

the business to which the permit applies. The commission may extend the term of the deposit for not more than four (4) additional one (1) year periods if the permittee is able to show to the satisfaction of the commission that the permittee is making a good faith effort to put the permit into operation.

As added by Acts 1982, P.L.69, SEC.6. Amended by P.L.250-2003, SEC.8.

IC 7.1-3-6-3

Reasons for permit

Sec. 3. The commission may issue a temporary beer permit only to:

- (1) enable a fair, athletic event, barbecue, picnic, wedding reception, convention, exhibition, spectacle or contest to be publicly held and carried on; or
- (2) accommodate the institutional activities of an association, society, charitable or benevolent organization, or a branch of one (1) of these, or both.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.250-2003, SEC.9.

IC 7.1-3-17.5-1

Issuance of permit

Sec. 1. (a) The commission may issue an excursion and adjacent landsite permit to a person who has been issued a riverboat owner's license under IC 4-33-6 or an operating agent (as defined in IC 4-33-2-14.5) to sell alcoholic beverages for on-premises consumption only. The permit may be a single permit even though more than one (1) area constitutes the licensed premises of the permit.

(b) A permit issued under this chapter may be used:

- (1) on the riverboat; and
- (2) in a restaurant owned by the person who has been issued a riverboat owner's license or an operating agent contract (as defined in IC 4-33-2-14.6) if the restaurant is located on property adjacent to the property used by the riverboat for docking purposes.

As added by P.L.15-1994, SEC.4. Amended by P.L.92-2003, SEC.61.

IC 7.1-3-17.5-6

Excursion and landsite permit; providing alcoholic beverages to guests free of charge

Sec. 6. Notwithstanding IC 7.1-5-5-7, the holder of an excursion and adjacent landsite permit may, subject to the approval of the commission, provide alcoholic beverages to guests without charge at an event on the licensed premises if all the following requirements are met:

- (1) The event is attended by not more than five hundred (500) guests.
- (2) The event is not more than three (3) hours in duration.
- (3) Each alcoholic beverage dispensed to a guest:
 - (A) is entered into a cash register that records and itemizes on the cash register tape each alcoholic beverage dispensed; and
 - (B) is entered into a cash register as a sale and at the same price that is charged to the general public.
- (4) At the conclusion of the event, all alcoholic beverages recorded on the cash register tape are paid by the holder of the excursion and adjacent landsite permit.
- (5) All records of the alcoholic beverage sales, including the cash register tape, shall be maintained by the holder of the excursion and adjacent landsite permit for not less than two (2) years.
- (6) The holder of the excursion and adjacent landsite permit complies with the rules of the commission.

As added by P.L.250-2003, SEC.10.

IC 7.1-3-18.5

Chapter 18.5. Tobacco Sales Certificate

IC 7.1-3-18.5-1

Tobacco sales certificate required

Sec. 1. (a) A person may not sell or otherwise distribute in exchange for consideration a tobacco product at retail without a valid tobacco sales certificate issued by the commission.

(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:

- (1) A premises consisting of a permanent building or structure where the tobacco product is sold or distributed.

(2) A premises upon which a cigarette vending machine (as defined by IC 35-43-4-7) is located.

As added by P.L.250-2003, SEC.11.

IC 7.1-3-18.5-7

Tobacco sales without certificate; Class A infraction

Sec. 7. (a) A person who is required to have a certificate under this chapter and who sells or distributes tobacco products without a valid certificate commits a Class A infraction. Each violation of this section constitutes a separate offense.

(b) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

As added by P.L.250-2003, SECTION 11. Amended by P.L.252-2003, SEC.4.

IC 7.1-3-23

Chapter 23. Denial, Suspension, and Revocation of Permits

IC 7.1-3-23-15

Repealed

(Repealed by P.L.250-2003, SEC.18.)

IC 7.1-3-23-16

Revocation upon conviction

Sec. 16. The commission may revoke a wholesaler's, retailer's, or dealer's permit of any type after final judgment of conviction for an offense defined in this title. The commission may revoke the permit of a wholesaler, retailer, or dealer upon a second violation of a provision of this title whether a judgment of conviction ensues or not.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.250-2003, SEC.12.

IC 7.1-4

ARTICLE 4. REVENUE AND TAXES

IC 7.1-4-1-40

Sec. 40. Additional Fee for Retailers and Dealers. The commission shall charge an additional fee of thirty dollars (\$30) for the issuance of a retailer's or dealer's permit of any type. This additional fee shall be in addition to all other fees imposed by this title. However, the holder of a multiple retailer or dealer permit, shall be charged only one (1) additional fee for his permit.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-4-4.1-2

Supplemental caterer's permit fee

Sec. 2. The fee for a supplemental caterer's permit is one hundred fifty dollars (\$150) per year.

As added by P.L.204-2001, SEC.43. Amended by P.L.250-2003, SEC.13.

IC 7.1-4-4.1-3

Employee's permit fee

Sec. 3. The following biennial license fee is imposed for an employee's permit:

(1) Five dollars (\$5) if the permit is used only to perform volunteer service that benefits a nonprofit organization.

(2) Thirty dollars (\$30) if subdivision (1) does not apply.

The term of a biennial employee's license is two (2) years.

As added by P.L.204-2001, SEC.43. Amended by P.L.250-2003, SEC.14.

IC 7.1-4-4.1-18

Duplicate or reissued permit fee

Sec. 18. The fee for a duplicate or reissued permit of any type is ten dollars (\$10). The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

As added by P.L.250-2003, SEC.15.

IC 7.1-4-11-3

Repealed

(Repealed by P.L.204-2001, SEC.68.)

IC 7.1-4-11-4

Sec. 4. (a) The department shall daily deposit with the treasurer of state:

(1) two cents (\$0.02) of the beer excise tax collected on each gallon of beer or flavored malt beverage, as provided by IC 7.1-4-2-1;

(2) six cents (\$0.06) of the liquor excise tax collected on each gallon of liquor, as provided by IC 7.1-4-3-1; and

(3) two cents (\$0.02) of the wine excise tax collected on each gallon of wine, as provided by IC 7.1-4-4-1.

(b) By the fifth day of each month, the treasurer of state shall transfer into the addiction services fund (IC 12-23-2) the total amount collected under subsection (a) for the preceding month.

As added by Acts 1981, P.L.103, SEC.4. Amended by P.L.2-1992, SEC.75; P.L.72-1996, SEC.21.

IC 7.1-5

ARTICLE 5. CRIMES AND INFRACTIONS

IC 7.1-5-5-7

Discrimination in sales prohibited; exception

Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom he is not authorized to sell under this title.

(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas.

(c) This section does not apply to the holder of an excursion and adjacent landsite permit that complies with IC 7.1-3-17.5-6.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.204-2001, SEC.51; P.L.250-2003, SEC.16.

IC 7.1-6

ARTICLE 6. YOUTH TOBACCO SALES AND

ENFORCEMENT

IC 7.1-6-1

Chapter 1. Definitions

IC 7.1-6-1-1

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-1-2

Sec. 2. "Person" has the meaning set forth in IC 35-41-1-22.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-1-3

Sec. 3. "Tobacco product" means a product that contains tobacco and is intended for human consumption.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2

Chapter 2. Youth Tobacco Law Enforcement Authority

IC 7.1-6-2-1

Sec. 1. The commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may enforce this article to the extent necessary to ensure the state's compliance with:

(1) Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26); and

(2) implementing regulations promulgated by the United States Department of Health and Human Services.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-2

Sec. 2. The division of mental health established under IC 12-21 shall coordinate the conduct of random unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this article. Only the commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct inspections under this section.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-3

Sec. 3. (a) It is unlawful for a person to sell cigarettes other than in an unopened package originating with the manufacturer that bears the health warning required by federal law.

(b) A person who violates this section commits a Class C infraction.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-4

Sec. 4. (a) An enforcement officer vested with full police powers and duties may engage a person less than eighteen (18) years of age as part of an enforcement action under this article if the initial or contemporaneous receipt or purchase of a tobacco product by a person less than eighteen (18) years of age occurs under the direction of an enforcement officer vested with full police powers and duties and is part of the enforcement action.

(b) An enforcement officer vested with full police powers and duties shall not:

(1) recruit or attempt to recruit a person less than eighteen (18) years of age to participate in an enforcement action under subsection (a) at the scene of a violation of section 2 of this chapter; or

(2) allow a person less than eighteen (18) years of age to purchase or receive a tobacco product as part of an enforcement action under subsection (a) without the written permission of the person's parents or legal guardians.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-5

Sec. 5. The division of mental health established under IC 12-21 shall annually prepare for submission to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26) and implementing regulations promulgated under that act.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-6**Youth tobacco education and enforcement fund**

Sec. 6. (a) The Richard D. Doyle youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund shall be used for the following purposes:

(1) For youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.

(2) For education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health and addiction, enforcement officers, or a program approved by the commission.

(3) For the commission, for enforcement of youth tobacco laws.

As added by P.L.177-1999, SEC.9. Amended by P.L.204-2001, SEC.57; P.L.215-2001, SEC.15; P.L.1-2002, SEC.36; P.L.252-2003, SEC.5.

IC 7.1-6-2-8

Payment of civil penalties; late penalties; interest

Sec. 8. (a) This section applies whenever a civil penalty payable to the Richard D. Doyle youth tobacco education and enforcement fund is imposed.

(b) The person liable for the civil penalty shall pay the full amount of the civil penalty to the commission

within thirty (30) days after final judgment.

(c) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for a late penalty equal to the greater of the following:

(1) Twenty-five percent (25%) of the amount of the civil penalty imposed under IC 35-46-1.

(2) The lesser of the following:

(A) Twenty-five dollars (\$25) multiplied by the number of days that have elapsed after the date that the civil penalty was imposed by a court.

(B) Five thousand dollars (\$5,000).

(d) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for interest on the unpaid amount of the:

(1) civil penalty imposed by a court; and

(2) late penalty imposed under this section.

The interest rate is the adjusted rate of interest as determined under IC 6-8.1-10-1 payable from the date that payment of the amount was due.

(e) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(f) The commission shall collect the following:

(1) Civil penalties imposed by a court.

(2) Late penalties imposed under this section.

(3) Interest imposed under this section.

(4) Reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(g) Late penalties and interest imposed under this section shall be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established by section 6 of this chapter.

As added by P.L.204-2001, SEC.58. Amended by P.L.252-2003, SEC.6.